

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

DELAWARE CORRECTIONAL OFFICERS ASSOCIATION,	:	
	:	
Charging Party,	:	<u>U.L.P. No. 00-07-286</u>
	:	
v.	:	
	:	
DELAWARE DEPARTMENT OF CORRECTION,	:	
	:	
Respondent.	:	

Probable Cause Determination

The Delaware Department of Correction (“DOC” or “State”) is an agency of the State of Delaware and a public employer within the meaning of §1302(n) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13 (1994). ¹

The Charging Party, Delaware Correctional Officers Association (“DCOA”) is an employee organization within the meaning of 19 Del.C. §1302(h). ² DCOA is the exclusive bargaining representative of the bargaining unit of uniformed correctional officers in Delaware’s adult correctional facilities within the meaning of 19 Del.C. §1302(i). ³

On July 25, 2000, DCOA filed this unfair labor practice charge alleging the State violated §1307, Unfair Labor Practices subsection (a)(1), (a)(2), (a)(3), and (a)(5) of the PERA, which provides:

¹ “Public employer” or “employer” means the State, any county of the State or any agency thereof, and/or any municipal corporation, municipality, city or town located within the State or any agency thereof, which upon the affirmative legislative act of its common council or other governing body has elected to come within the former Chapter 13 of this title, or which hereafter elects to come within this chapter, or which employs 100 or more full-time employees. 19 Del.C. §1302(n).

² “Employee organization” means any organization which admits to membership employees of a public employer and which has as a purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative, or agent of said organization.

³ “Exclusive bargaining representative” or “exclusive representative” means the employee organization which as a result of certification by the Board has the right and responsibility to be the collective bargaining agent of all employees in that bargaining unit.

- (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
 - (1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.
 - (2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization.
 - (3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.
 - (5) Refuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit, except with respect to a discretionary subject.

On August 4, 2000, the State filed its Answer to the Charge, including new matter. DCOA amended its Charge on August 14, 2000, and filed its Response to New Matter on August 17, 2000.

The Charge was subsequently held in abeyance by the Public Employment Relations Board pending issuance of its decision in State of Delaware and AFSCME Council 81 (D.S. 00-05-284), which addressed whether the release of home addresses by a State agency was prohibited by the Freedom of Information Act. That decision was issued on November 20, 2000, and was not appealed. Wherefore, this unfair labor practice charge is no longer in abeyance and is ripe for a probable cause determination.

DISCUSSION

Article V of the Rules and Regulations of the Delaware Public Employment Relations Board provides, in relevant part:

5.6 Decision or Probable Cause Determination

- (a) Upon review of the Complaint, the Answer and the Response, the Executive Director shall determine whether there is probable cause to believe that an unfair labor practice may have occurred.

At all times relevant to this dispute, the State and DCOA were parties to a collective bargaining agreement, which term extended from October 11, 1996, through October 10, 1999. It is undisputed that on February 1, 1996, the State and DCOA executed this Memorandum of Understanding:

In recognition of the exclusive bargaining agent's obligation to represent all employees within the bargaining unit for collective bargaining purposes pursuant to 19 Del.C. ch. 13, the Delaware Correctional Officers' Association ("DCOA") and the State of Delaware ("State") hereby agree to the following Memorandum of Understanding ("Memorandum"):

1. The State agrees to provide the DCOA with a semi-monthly list of all employees in the DCOA Department of Correction bargaining unit which contains the name, home addresses, position classification and employment date of each bargaining unit member;
2. The DCOA agrees that any and all information provided by the State pursuant to this Memorandum shall be used solely for official Association purposes in its role as exclusive representative;
3. The DCOA agrees to indemnify and hold the State harmless against any and all claims, demands, legal actions and other forms of liability that arise out of or by reason of any action taken or not taken by the State to comply with any term of this Memorandum; and
4. This Memorandum shall take effect and be implemented within 30 days of the signing of this Memorandum.
5. By entering into this Agreement, DCOA does not waive, but expressly retains any rights to request and receive from the State such additional information to which it may be entitled by law.

/s/ Velma (Sue) Joyce
For the DCOA
Date: 1 Feb. 96

/s/ Thomas LoFaro
For the State
Date: 2-1-96

By letter dated February 25, 2000, the State, through its Manager of Labor Relations, advised DCOA, in relevant part:

. . . I notified you that we had received an informal opinion from the Attorney General's Office which indicated that providing employee home addresses to an exclusive bargaining agent may violate employees' privacy rights. As a result of this opinion, we will no longer be able to continue providing DCOA with home addresses of bargaining unit employees. For a more detailed review of this issue, you may wish to read the case of *Sheet Metal Workers Intl. v. US Dept. of Veterans Affairs*, 135 F.3d 891 (3rd Cir. 1998), in which the Court of Appeals held that disclosure of names, social security numbers and home addresses of employees to a union monitoring compliance with federal labor laws would constitute an unwarranted invasion of personal privacy. The appeals court adopted the reasoning of the United States Supreme Court in *U.S. Dept. of Defense v. Federal Labor Relations Authority*, 510 U.S. 487 (1994) in which the disclosure of home addresses of federal civil service employees by their employing agency to the employees' collective bargaining representative was denied on the basis of privacy concerns. The Court found it clear that the employees had a privacy interest in nondisclosure and in avoiding the influx of union related mail and, perhaps, union related telephone calls or visits. 510 US at 500 ...

The State does not dispute it ceased providing home addresses of bargaining unit members to DCOA after February 25, 2000. DCOA alleges this failure to provide home addresses in accordance with the 1996 Memorandum of Agreement is an unfair labor practice in that it interferes with or restrains the right of bargaining unit members to communicate with their exclusive representatives; interferes with the

existence or administration of DCOA; violates the State's duty to bargain in good faith with DCOA; and otherwise discourages membership in an employee organization by preventing DCOA from contacting its bargaining unit members.

DCOA asserts that the home addresses, as well as telephone numbers, of bargaining unit members are critical to the union effectively meeting its obligations as an exclusive bargaining representative. It argues the nature of the responsibilities of correctional officers, the security of the facilities in which these employees work, and the multiple and expanding number of correctional facilities statewide to which these employees are assigned, effectively precludes the union from direct contact with bargaining unit employees at the work site. Further, the union contends it cannot fulfill its representative responsibilities to the increasing number of new correctional officers without their home addresses and/or telephone numbers.

The State moved the charge be dismissed because it never agreed to provide the telephone numbers of bargaining unit employees to DCOA, nor did it subsequently refuse to provide this information. Consequently, it asserts the charge is unfounded and should be dismissed in its entirety.

DCOA does not allege the State agreed to provide employees' telephone numbers, but rather asserts that telephone numbers are necessary to its communication and representative efforts. DCOA requests PERB order the State to provide telephone numbers as part of its requested remedy for the alleged unfair labor practice.

This charge raises two legal issues. First, whether the State violated the statute when it unilaterally refused to continue to comply with the terms of the parties' 1996 Memorandum of Agreement and ceased providing home addresses of bargaining unit employees to DCOA. The second issue is whether DCOA is entitled, as a matter of law, to home addresses and telephone numbers under the Public Employment Relations Act, independent of any negotiated agreement. There is no dispute of the underlying facts and the pleadings provide a reasonable basis for concluding an unfair labor practice may have occurred.

For these reasons, the State's Motion to Dismiss is denied and probable cause is found to proceed with the processing of this charge. As there are no material facts in dispute, a hearing is unnecessary.

The parties are directed to confer and submit to the Hearing Officer a briefing schedule on the legal issues by Monday, February 12, 2001.

IT IS SO ORDERED

/s/Deborah L. Murray-Sheppard
DEBORAH L. MURRAY-SHEPPARD
PRINCIPAL ASSISTANT/HEARING OFFICER
DEL. PUBLIC EMPLOYMENT RELATIONS BD.

DATED: 30 January 2001